

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BATTITES WESLEY,

Petitioner,

ORDER

v.

09-cv-0582-slc

PETER HUIBREGTSE, Warden,
Wisconsin Secure Program Facility,
RICK RAEMISCH, Secretary, Wisconsin
Department of Corrections, and
ALFONSO GRAHAM, Chairperson,
Wisconsin Parole Board,

Respondents.

On November 24, 2009, this court entered a judgment, dismissing petitioner Battites Wesley's application for a writ of habeas corpus without prejudice on the grounds that one of his claims was not properly brought in a habeas petition and his other claims did not amount to the denial of a constitutional right. Petitioner seeks to proceed *in forma pauperis* on appeal from that judgment. Because petitioner challenged the actions of state corrections officials and not his conviction or sentence, he does not need a certificate of appealability. Anderson v. Benik, 471 F.3d 811, 814 (7th Cir. 2006). However, unless his appeal is taken in good faith, he cannot proceed *in forma pauperis* on appeal. 28 U.S.C. § 1915(a)(3).

To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32

(7th Cir. 2000). I am unable to make this finding. Petitioner is free to contest his transfer to the Wisconsin Secure Program Facility by filing a civil rights lawsuit under § 1983. Further, because I dismissed the petition without prejudice, he may file a new habeas petition attacking his custody resulting from his disciplinary violations, provided he has specific facts to show that he was deprived of his rights to due process at a particular disciplinary hearing.

ORDER

IT IS ORDERED that petitioner's request for permission to proceed *in forma pauperis* on appeal is DENIED because his appeal is not taken in good faith.

Entered this 7th day of December, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge